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No. **2607**

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**United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

JOSEPH B. BISTLINE,

*Plaintiff in Error,*

vs.

THE UNITED STATES OF AMERICA,

*Defendant in Error.*

**TRANSCRIPT OF RECORD**

**Filed**

**MAY 8 - 1915**

**F. D. Monckton**  
**Clerk**

*Upon Writ of Error from the United States District  
Court for the District of Idaho, Eastern  
Division.*



No. \_\_\_\_\_

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

Thos. F. Terrell, Pocatello, Idaho,  
R. M. Terrell, Pocatello, Idaho,  
Attorneys for Plaintiff in Error.

C. H. Lingenfelter, Boise Idaho,  
Ex-United States Attorney for the District of  
Idaho, and Attorney for the Plaintiff,

J. S. McClear, Boise, Idaho,  
United States Attorney for the District of  
Idaho, and Attorney for the Plaintiff, succes-  
sor to said C. H. Lingenfelter,  
Attorneys for Defendant in Error.

*In the District Court of the United States, within  
and for the District of Idaho, Eastern Division.*

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THE UNITED STATES OF AMERICA,

*Plaintiff,*

vs.

JOSEPH B. BISTLINE,

*Defendant.*

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*Complaint Action at Law.*

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Comes now the plaintiff, United States of America, by C. H. Lingenfelter its attorney for the District of Idaho, acting in this behalf by direction of the Attorney General of the United States, and for cause of action against the defendant complains and alleges as follows:

1—

That at all the times herein mentioned the defendant, Joseph B. Bistline, was a citizen of the United States, and a resident of the County of Bannock and State and District of Idaho.

2—

That prior to the acts herein complained of, the plaintiff was the owner in fee simple and in the possession of the following public lands of the United States, to-wit: The West half ( $W\frac{1}{2}$ ) of the Northwest quarter ( $NW\frac{1}{4}$ ), and the Southeast quarter ( $SE\frac{1}{4}$ ) of the Northwest quarter ( $NW\frac{1}{4}$ ), and Southwest quarter ( $SW\frac{1}{4}$ ) of the Northeast quarter

(NE $\frac{1}{4}$ ) of Section Eight (8) Township Six (6) South of Range Thirty-four (34) East of Boise Meridian, containing one hundred sixty (160) acres, more or less.

## 3—

That on the 16th day of September, 1904, the defendant, Joseph B. Bistline, desired to secure for himself the title, use and possession of the land hereinbefore described and for that purpose filed an application in the United States Land Office at Blackfoot, Idaho, under Section 2289 of the Revised Statutes of the United States to enter as a homestead the real estate mentioned and described in paragraph 2 hereof; that on the said 16th day of September, 1904, the said applicant received Receiver's Receipt No. 9880 for sixteen (\$16.00) dollars, being the amount of fee and compensation of the Register and Receiver for said entry under Section 2290 of the Revised Statutes of the United States, from the then Receiver of the said United States Land Office,

## 4—

That further, for the purpose of securing the title, use and possession of the land aforesaid, the said defendant, Joseph B. Bistline, on the 15th day of September, 1904, subscribed and swore to his homestead affidavit, as required under Section 2290 of the Revised Statutes of the United States, before one Fred G. Caldwell, the then Deputy Clerk of the United States District Court for the District of Idaho, and thereafter filed the said affidavit in the



United States Land Office at Blackfoot, Idaho, in which affidavit the affiant stated and swore, among other things, that his application, for the land heretofore described, was honestly and in good faith made for the purpose of actual settlement and cultivation, and that he would faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to the land applied for and that he applied for the same in good faith to obtain a home for himself and his family

## 5—

Further, to enable him to secure the title, use and possession of the said land, the said Joseph B. Bistline on the 8th day of December, 1905, claimed the right to commute, under the provisions of Section 2301 of the Revised Statutes of the United States, of his said entry before one Fred G. Caldwell, a then duly acting and qualified Deputy Clerk of the United States District Court for the District of Idaho, at Pocatello, Idaho, and in pursuance of such claim, did on the 8th day of December, 1905, appear before such Deputy Clerk, as aforesaid, and swore and subscribed to an affidavit, and at the same time and place and before the same officer, appeared Theodore Swanson and William F. Kasiska, as witnesses for said Joseph B. Bistline, on final proof, and they the said witnesses, subscribed and swore to their respective affidavits that are required by law, in each of which affidavits the affiant therein stated and swore, among other things, that he, Joseph B. Bist-

line, had settled upon the homestead on about the middle of March, 1905, and had established actual residence thereon at the same time; that the claimant and family resided continuously on the homestead since first establishing residence thereon and that he had not been absent from the land since making settlement; that the entryman had acted in good faith, but complainant alleges that the said affidavit of the said Joseph B. Bistline, and the affidavit of the said Theodore Swanson, and the said affidavit of the said William F. Kasiska, referred to in this paragraph, were all and each of them false, fraudulent and untrue in this: that in truth and in fact, it was not true that the claimant and his family resided continuously on the homestead since first establishing residence thereon about the middle of March, 1905, to the time of the said final proof, and that the entryman had not been absent from the land since making settlement, that in truth and in fact, at the time of the subscribing and swearing to said affidavits and the filing thereof in the United States Land Office as hereafter set forth, the said entryman, and his family, *had lived continuously off and away from said homestead since first making settlement, and with his family was continuously absent from his said homestead at all the times from the date of the said time claimed as the time of settlement, to the time of final proof on commutation*; that in truth and in fact that all the time that the said Joseph B. Bistline claimed residence upon said homestead and that he had not been absent from said

homestead, he was in fact making his home with his family in the city of Pocatello, Idaho, off and away from said homestead and continuously resided with his family in said city of Pocatello, Idaho, at all the times which he stated in his affidavit aforesaid, that he had resided upon said homestead, and had not been absent therefrom; all of which was well and truly known to each of them, the said Joseph B. Bistline, and the said Theodore Swanson and the said William F. Kasiska, when they made their several and respective affidavts as alleged in this paragraph; and the complainant further alleges, that the affidavits referred to in this paragraph, were, after being so subscribed and sworn to before the said Deputy Clerk of the United States District Court aforesaid, by the said Joseph B. Bistline, caused to be filed in the United States Land Office at Blackfoot, Idaho, and were made, sworn to, subscribed and filed in the said land office with the intention and purpose on the part of the said Joseph B. Bistline that the same should be read and relied upon by the said officers of the complainant and for the purpose of enabling the said Joseph B. Bistline to secure to himself the title, use and possession of the said tract of land and ultimately obtain the patent hereinafter mentioned.

## 6—

That the officers of the complainant charged with the disposition of the public lands of the complainant relied upon and were deceived and misled by the said statements so made by the said Joseph B. Bist-

line, and the said Theodore Swanson and the said William F. Kasiska in their several and respective affidavits and supposed and believed the said statements to be true and because they were so deceived and mislead and because they so relied upon the said statements and believed them to be true, the said officers *issued and delivered to the said Joseph B. Bistline the complainant's patent dated June 30, 1906*, conveying to the said Joseph B. Bistline the legal title to the said land.

## 7—

That on or about November, 1910, said defendant together with his wife, Grace Bistline, falsely and fraudulently conveyed by warranty deed for a valuable consideration, all their right, title and interest in and to the Southwest quarter (SW $\frac{1}{4}$ ) of the Northwest quarter (NW $\frac{1}{4}$ ), and the Southeast quarter (SE $\frac{1}{4}$ ) of the Northwest quarter (NW $\frac{1}{4}$ ) of Section Eight (8), Township Six (6) South of Range Thirty-four (34) East of Boise Meridian, and on the 20th day of September, 1910, the said defendant, together with his wife, Grace Bistline, for a valuable consideration falsely and fraudulently conveyed by warranty deed all their right, title and interest in and to the Northwest quarter (NW $\frac{1}{4}$ ) of the Northwest quarter (NW $\frac{1}{4}$ ) of Section Eight (8), Township Six (6) North of Range Thirty-four (34) East of Boise Meridian to Henry Karibo and Samuel Bloom, and that on the 1st day of November, 1910, defendant, together with his wife, Grace Bistline, falsely and fraudulently conveyed by warranty

deed for a valuable consideration to one Henry S. Woodland, all their right, title and interest in and to the Southwest quarter (SW $\frac{1}{4}$ ) of the Northeast quarter (NE $\frac{1}{4}$ ) of Section Eight (8), Township Six (6) South of Range Thirty-four (34) East of Boise Meridian, and the said grantees named in said deed went into immediate possession and still continue to hold the legal title to said lands.

8—

That the reasonable value of said lands, so acquired by the defendant by false and fraudulent representations as aforesaid, is Eight Thousand Dollars (\$8,000.00) and that at the time of the issuance of patent plaintiff to defendant as aforesaid, the reasonable value of said lands was the sum of \$1600.00.

That by reason of the premises the said defendant has falsely and fraudulently appropriated and converted the proceeds of said sale to his own use and falsely and fraudulently divested the said plaintiff of the title to said lands to the damage to the plaintiff in the sum of Eight Thousand Dollars (\$8,000.00).

Wherefore, plaintiff prays judgment against the said defendant for the said sum of Eight Thousand Dollars (\$8,000.00) together with interest thereon at the rate of seven per cent (7%) per annum from the 30th day of June, 1906, and for costs of suit.

C. H. LINGENFELTER,

*United States Attorney for the District of Idaho,  
and Attorney for the Plaintiff.*



State of Idaho,  
County of Ada,—ss.

C. H. Lingenfelter, being first duly sworn, upon his oath deposes and says: that he is the United States Attorney for the District of Idaho, and attorney for the plaintiff; that he makes this affidavit for and on behalf of the United States, plaintiff herein; that he has read the above and foregoing complaint and knows the contents thereof, and believes the facts therein stated to be true.

C. H. LINGENFELTER.

Subscribed and sworn to before me this 17th day of September, 1913.

A. L. RICHARDSON,

Endorsed:

*Clerk.*

Filed, Sept. 17, 1913.

A. L. Richardson, Clerk.

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*In the District Court of the United States, within  
and for the District of Idaho, Eastern Division.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH B. BISTLINE,

Defendant.

DEMURRER TO COMPLAINT.

Comes now the defendant, subject to his motion to strike paragraph seven from the complaint on file herein and without waving any rights under said

motion, demurs to the said complaint for the reasons and upon the grounds following, to-wit:

1. That said complaint fails to state facts sufficient to constitute a cause of action.

2. That the alleged cause of action stated in said complaint is barred by the provisions of section 8 of 26 Statutes At Large of the United States; and the facts alleged in said complaint as said cause of action are barred by the provisions of said statute.

THOS. F. TERRELL and

WITTY & TERRELL,

*Attorneys for Defendant,*

Endorsed. Residence, Pocatello, Idaho.

Filed, *Oct* . . . . . 3, 1913.

A. L. Richardson, Clerk.

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### JOURNAL ENTRY.

#### *Order Overruling Demurrer.*

At a stated term of the District Court of the United States for the District of Idaho, held at Boise, Idaho, on Saturday the 31st day of January, 1914.

Present: Hon. Frank S. Dietrich, Judge.

THE UNITED STATES,

vs.

JOSEPH B. BISTLINE.

No. 158. Eastern Division.

On this day was announced the decision of the court upon the demurrer to the complaint herein heretofore argued and submitted which decision is in writing and on file, and in accordance therewith,

it is ordered that said demurrer be and the same is hereby overruled and the defendant is given thirty days from this date in which to plead further. An order having been entered on October 15, 1913, sustaining defendant's motion to strike out paragraph 7 of the complaint in said cause, it is now ordered that said order be and the same is hereby set aside and vacated, and the said paragraph 7 of the complaint is permitted to stand.

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*In the District Court of the United States, within  
and for the Eastern Division, District of Idaho.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH B. BISTLINE,

Defendant.

ANSWER.

*Comes Now the Defendant*, and for answer to the complaint of the plaintiff on file herein admits, denies and alleges as follows:

1. This defendant admits that at all times mentioned in the plaintiff's complaint he was, and now is, a citizen of the United States and a resident of the County of Bannock, State of Idaho;

2. This defendant admits that prior to the acts complained of in the plaintiff's complaint the United States of America was the owner in fee of the West half of the Northwest quarter ( $W\frac{1}{2}NW\frac{1}{4}$ ) and the Southeast quarter of the Northwest quarter



(SE $\frac{1}{4}$ NW $\frac{1}{4}$ ) and the Southwest quarter of the Northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section Eight in Township Six, South of Range Thirty-four East of the Boise Meridian, containing one hundred sixty (160) acres;

3. This defendant admits that about the 16th day of September, 1904, he desired to secure for himself the title, use and possession of the lands hereinbefore described, and for that purpose filed an application in the U. S. Land Office at Blackfoot, Idaho, under Section 2289 of the Revised Statutes of the United States, to enter as a homestead the real estate hereinbefore described, and that on said date this defendant received a receipt of the Receiver of said land office, No. 9880, for the sum of sixteen dollars, being the amount in fee and compensation of the Register and Receiver of the said land office for the entry of this defendant of said lands, under Section 2290 of the Revised Statutes of the United States; and this defendant further alleges that at the same time and place he paid to the said Receiver of said land office the further sum of one hundred dollars, the same being a portion of the purchase price of the said lands required by the United States to be paid by this defendant at the time of his said entry.

4. This defendant further admits that for the purpose of securing the title, uses and possessions of the said lands he, on the 15th day of September, 1904, subscribed and swore to his homestead affidavit as required by the laws of the United States, before one Fred G. Caldwell, the then Deputy Clerk

of the United States District Court for the District of Idaho, and thereafter caused to be filed the said affidavit in the U. S. land office at Blackfoot, Idaho; and this defendant admits that in said affidavit he stated and swore, among other things, that his application for the lands above described was honestly and in good faith made for the purpose of actual settlement and cultivation, and that he, the said Joseph B. Bistline, did faithfully and honestly endeavor to comply with all of the requirements of the law as to settlement, residence and cultivation necessary to acquire title to the lands so applied for, and that he applied for the same in good faith and to obtain a home for himself and family; and this defendant avers that all of the said statements so made in said affidavit were, at the time the same were made, ever since have been and now are, true.

5. That this defendant further admits, that to enable him to secure the title, use and possession of the said lands that he, on or about the 8th day of December, 1905, claimed the right to commute, under provisions of Section 2301 of the Revised Statutes of the United States, of his said entry, before the said Fred G. Caldwell, Clerk as aforesaid, at Pocatello, Idaho; and in pursuance of said claim, on or about the 8th day of December, 1905, appeared before the said Deputy Clerk, and swore and subscribed to an affidavit, and at the same time and place and before the same officer appeared Theodore Swanson and William F. Kasiska, as witnesses for this defendant on his final proof and they, the said

witnesses, subscribed and swore to their respective affidavits in that behalf as required by law. In each of the affidavits, the affiants therein stated and swore, among other things, that he, Joseph B. Bistline, had settled upon said homestead on or about the middle of March, 1905, and had established actual residence thereon at the same time; that the claimant and his family resided continuously on the homestead since first establishing residence thereon, and that said claimant had not been absent since making settlement; that the entryman had acted in good faith; but defendant denies that said affidavits, or either of them, as made by this defendant, or by the said Theodore Swanson, or by the said William F. Kasiska, were or are false, fraudulent or untrue in the respects alleged in said complaint, or in any respect whatever; and this defendant denies that at the time of making said affidavits or either or any of them, that in truth or in fact it was not true that the claimant or his family resided continuously on the homestead aforesaid since he first established his residence thereon about the middle of March, 1905, at the time of his said final proof, and that he had not been absent from the land since making settlement, and denies that in truth or in fact at the time of subscribing and swearing to said affidavits, or at the time of the filing thereof in the U. S. Land Office the said entryman or his family had lived continuously off or away from said homestead since first making settlement, or with his family had lived continuously off or away from said homestead since

first making settlement, or with his family was continuously absent from said homestead at all the times or at any time from the said time claimed as to the time of settlement, to the time of final proof on commutation; and denies that at the time of making of said affidavits, or at any other time, that it was true or was a fact that at all or any of the times said defendant claimed residence upon said homestead he had been or was absent from said homestead or had been or was making his home with his family in the city of Pocatello, off or away from said homestead; and denies that at the time of making the said affidavit or of the filing of the same in the land office aforesaid, it was true or was a fact that he had resided off and away from said homestead or had continuously resided with his family in the city of Pocatello, Idaho, at all times which he stated in his affidavit aforesaid he had resided upon said homestead and had not been absent therefrom.

And this defendant further denies that he, or the said Theodore Swanson or the said William F. Kasiskan, or either of them, when they made their several and respective affidavits as aforesaid, well and truly or otherwise knew that the said affidavits, or either of them, was false or untrue as alleged in said complaint, or in any other respects whatever, but this defendant alleges the facts to be that at the time the said affidavits were made, and at the time the same were filed in the land office as aforesaid, and during the time of entry of the said Joseph B. Bistline of the lands aforesaid and down to the time



of making and filing said affidavits, that the defendant with his family resided continuously upon the lands aforesaid, and that he had not been absent from said lands since making settlement thereon, except casually in attendance upon the business of his usual occupation ;

And the defendant further alleges, that he had a dwelling house upon said land during all of the said time and had made his home with his family upon said lands to the exclusion of a home elsewhere and had in all respects complied with the requirements of the laws of the United States requisite to obtain title to said land as a homestead and this defendant admits that the affidavits above referred to were, after being subscribed and sworn to before said Deputy Clerk, of the United States District Court, as aforesaid, were by this defendant caused to be filed in the land office at Blackfoot, Idaho, and that they were made, subscribed and sworn to and filed in the said office for the purpose and intention on the part of the defendant that the same should be read and relied upon by the said office of the United States, and for the purpose of enabling this defendant to secure for himself the title, use and possession of the said tract of land and ultimately to obtain the patent mentioned in the said complaint.

6. This defendant further says, that he has every reason to believe and therefore alleges, that the officers of the plaintiff charged with the disposition of public lands of the plaintiff relied upon the said statements so made by this defendant and by his

witnesses aforesaid, and that said officers supposed and believed the said statements to be true; but this defendant denies that the said officers, or either of them, were deceived or misled by said statements, or any of them, and denies, because the said officers were deceived or misled, that they or either of them issued and delivered to this defendant plaintiff's patent, dated June 30, 1906, conveying to the said defendant the legal title to the said lands above described, but on the contrary this defendant alleges that because of the statements made in said affidavits, all of which were true at the time the same were made, and which statements complied with the laws of the United States relative to the making of the final proof of the homestead claims, the said officers in compliance with law and with their duties in that respect did legally and justly issue to this defendant the patent aforesaid to which he, this defendant, at the time of the issuance of the said patent was, and still is, entitled.

7. That as to paragraph 7 of the plaintiff's complaint this defendant does not answer, for the reason that the same has been stricken from the said complaint by an order of the said court wherein this cause was pending.

8. This defendant denies, that the reasonable value of the said land so acquired by the defendant is of the value of one thousand six hundred dollars or in excess of the sum of one thousand dollars, and denies that he acquired said lands or any lands by fraudulent representations as aforesaid or by any

false or fraudulent representation; and this defendant further alleges, that at the time he filed upon the said lands as a homestead and at the time he made his final proof thereon and at the time he acquired a patent thereto as aforesaid, the said lands were desert, sage brush lands without water for irrigation and in the condition in which he received the title to the said lands, and at the time the patent thereto issued, the same were not worth to exceed one thousand dollars;

9. Denies that by reason of the premises, or for any other reason, the defendant has falsely or fraudulently appropriated or converted the proceeds of the said or any sale of the said lands to his own use, or falsely or fraudulently divested the plaintiff of the title to the said lands, to the damage to the plaintiff in the sum of one thousand six hundred dollars, or in any other sum whatever.

WHEREFORE, defendant having answered to the plaintiff's complaint, prays that the plaintiff take nothing by the said complaint and that the same be dismissed absolutely, and that defendant have and recover from the plaintiff his costs herein expended and all other and proper relief.

THOS. F. TERRELL and  
WITTY & TERRELL,  
Attorneys for Defendant.

State of Idaho,  
County of Bannock,—ss.

Joseph B. Bistline, being first duly sworn, deposes and says: That he is the defendant in the above entitled action; that he has read the within and foregoing answer and knows the contents thereof, and verily believes the facts therein stated to be true.

JOSEPH B. BISTLINE.

Subscribed and sworn to before me, this 19th day of February, A. D. 1914.

(N. P. Seal.)      ROBERT M. TERRELL,  
Notary Public.

Endorsed: Filed Feb. 21, 1914. A. L. Richardson, Clerk.

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### JOURNAL ENTRY.

*Order Granting Defendant Leave to File Amendments to Answer.*

At a stated term of the District Court of the United States for the District of Idaho, held at Pocatello, Idaho, on Monday the 9th day of March, 1914.

Present: Hon. Frank S. Dietrich, Judge.

THE UNITED STATES,

vs.

JOSEPH B. BISTLINE.

No. 158.

Upon application of counsel for defendant, ordered that said defendant have leave to file amendments to the answer herein.



*In the District Court of the United States, within  
and for the Eastern Division of the  
District of Idaho.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH B. BISTLINE,

Defendant.

### AMENDMENT TO ANSWER.

Comes now the defendant, Joseph B. Bistline, with leave of court first had and obtained, filed this as an amendment to and as a further answer to his original answer on file herein, and says:

Strike out paragraph seven of said original answer and consider in lieu thereof, the following:

Answering unto paragraph seven of the plaintiff's complaint, this defendant denies that on or about November, 1910, or at any other time, the defendant with his wife, Grace Bistline, falsely or fraudulently conveyed by warranty deed for a valuable consideration or otherwise, all their right, title or interest in or to the southwest quarter of the northwest quarter or the southeast quarter of the northwest quarter of section eight in township six south of range thirty-four, east of Boise Meridian, or any part thereof; and denies that on or about the 20th of September, 1910, or at any other time, the defendant with his said wife, for a valuable consideration or otherwise falsely or fraudulently conveyed by warranty deed or otherwise all their right title or interest in or to

the northwest quarter of the northwest quarter of said section eight in said township and range, or any part thereof, to Henry Karibo and Samuel Bloom, or any other person; and denies that on the 1st day of November, 1910, or at any other time, the defendant with his said wife, falsely or fraudulently conveyed by warranty deed or otherwise for a valuable or any consideration to Henry Woodland or any other person, all or any of their right title or interest in and to the southwest quarter of the northeast quarter of said section, township and range, or any part thereof; and this defendant alleges that he did make the conveyances to the several persons above mentioned, for the lands above described, at or about the time alleged, but avers that each and every of said conveyances were made, executed and delivered to said above mentioned persons, for an adequate and valuable consideration, in good faith, honestly believing that this defendant was fully vested with the fee simple title to said lands so conveyed, and that he had acquired the said title from the plaintiff herein in the manner provided by law, and the rules and regulations of the Department of the Interior of the United States of America.

#### FURTHER ANSWER AND SEPARATE DEFENSE.

And this defendant further answering unto the plaintiff's complaint on file herein, alleges:

That on the 10th day of April, 1911, this plaintiff United States of America, with full knowledge of all

the facts, and of its rights in the premises, and upon which the action at bar is based, commenced an action against this defendant, Joseph B. Bistline, in the Circuit Court of the United States for the Eastern Division of the District of Idaho, being the equity division of the same court in which the present action is pending, to cancel, vacate and set aside the patent issued by the United States of America to the said Joseph B. Bistline for the identical lands described in the plaintiff's complaint herein, and the facts alleged in said action to cancel said patent are identical to the facts alleged herein as a basis of damages; that the said action so commenced to cancel said patent was answered by the defendant, and after issue was joined certain proceedings were had therein from time to time, until on or about the 17th day of September, 1913, when the said action to cancel said patent was dismissed and a judgment was duly made and given in favor of the defendant and against the plaintiff dismissing the said action to cancel said patent for the said lands described in said complaint and described in the complaint in this action;

That on the 11th day of April, 1911, when the plaintiff herein commenced said action against this defendant to cancel the patent for said lands, the plaintiff had the right and option to commence and pursue said action to cancel said patent or to ratify the title so conveyed by said patent and pursue an action to recover the value of said land conveyed by said patent, if the same had been fraudulently obtained;

And this defendant alleges that the plaintiff, on the 11th day of June, 1911, by the commencement of said action to cancel said patent and by a pursuit thereof to its dismissal and judgment on the 17th day of September, 1913, for the defendant, did exercise the plaintiff's right and option and then and there elected between two inconsistent remedies then open to the plaintiff's choice, and by such election of the remedy to be pursued, the plaintiff became, was and now is bound by the election and choice so made, and cannot now maintain this action for damages after having heretofore elected its action to cancel said patent as aforesaid.

And this defendant further alleges that the action so commenced by the plaintiff on the 10th day of April, 1911, against this defendant, to cancel the patent issued by the plaintiff conveying certain lands described therein and described in said action, to the defendant, was litigated and contested by an answer of the defendant tendering an issue upon all of the material allegations of the plaintiff's bill or complaint and setting forth new matter constituting a defense to said action; that the affirmative matter pleaded by the defendant in his said answer, was admitted by the plaintiff, and the defendant was at all times ready and willing to submit said action upon the issue tendered and demanded, time after time, the trial of said action; that the plaintiff failed, neglected and refused to make proof of the facts alleged in said bill or complaint, and being pressed for a trial, after a lapse of about three years, on account

of the issue tendered and matters pleaded by the defendant, dismissed said action and on or about the 17th day of September, 1913, a judgment in favor of the defendant and against the plaintiff was duly made and given in said court and cause dismissing the said action absolutely and unconditionally, which said judgment is now in full force and effect and is conclusive of all of the facts in issue in said action;

That this action by the plaintiff against the defendant for damages is based upon and grows out of the same facts in issue and determined in said former action to cancel said patent, and the facts alleged in the complaint herein as a basis for plaintiff's claim for damages, are the identical facts alleged by the plaintiff in its former action as grounds for the cancellation of said patent;

That the failure of the plaintiff to prosecute the said action to cancel said patent for a period of nearly three years, during all of which time or the greater part thereof, the defendant was demanding a trial of said cause, and the admission of the plaintiff in open court that the plaintiff could not recover the relief sought nor any relief in said action, and the final dismissal thereof and the judgment of dismissal absolute, constitutes and is a determination of the merits of said controversy; and this action by the plaintiff, seeking to recover damages based upon the identical state of facts at issue in said former action, is an attempt to re-adjudicate a matter already heretofore fully determined.



*Wherefore*, defendant prays that plaintiff take nothing by its complaint herein, and that said action be barred and said complaint be dismissed absolutely, and for all other and further relief applicable in the premises.

THOS F. TERRELL and  
R. M. TERRELL,

Attorneys for defendant,  
Residence and Postoffice Address, Pocatello, Idaho.

State of Idaho,  
Bannock County,—ss.

Joseph B. Bistline being first duly sworn deposes and says that he is the defendant in the above entitled action; that he has read the within and foregoing amendment to his answer heretofore filed herein, and knows the contents of said amendment; and he verily believes the facts stated in his said amendment to said answer to be true.

JOSEPH B. BISTLINE.

Subscribed and sworn to before me on this the 9th day of March, 1914.

(Seal.)

ROBERT M. TERRELL,  
Notary Public.

Endorsed: Filed, March 9, 1914. A. L. Richardson, Clerk.

*In the District Court of the United States, Within  
and for the Eastern Division of the  
District of Idaho.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH B. BISTLINE,

Defendant.

MOTION TO STRIKE.

Plaintiff by counsel moves to strike out defendant's further answer and separate defense, and for cause thereof says that said answer and separate defense presents no valid defense to the action brought, and the same is, therefore, irrelevant and immaterial, and if the facts pleaded in said plea were true, it would not and should not defeat plaintiff's action.

J. L. MCCLEAR,

Attorney for Plaintiff,

Residence P. O., Boise, Idaho.

Received copy this March 10th, 1914.

THOS. F. TERRELL,

Attorney for Defendant.

Endorsed: Filed, March 10, 1914. A. L. Richardson, Clerk.

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JOURNAL ENTRY.

*Order Denying Plaintiff's Motion to Strike Out Certain Portions of Defendant's Answer.*

At a stated term of the District Court of the

United States for the District of Idaho, held at Boise, Idaho, on Monday the 15th day of June, 1914.

Present: Hon. Frank S. Dietrich, Judge.

THE UNITED STATES,

vs.

JOSEPH B. BISTLINE.

No. 158, Eastern Division.

A memorandum decision having been filed June 12, 1914, in this cause upon plaintiff's motion to strike out certain portions of the answer, which decision is to the effect that said motion be denied, now in accordance with said decision it is ordered that said motion to strike out portions of the answer in this cause be and the same is hereby denied.

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VERDICT.

*In the District Court of the United States for the  
District of Idaho, Eastern Division.*

THE UNITED STATES,

Plaintiff,

vs.

JOSEPH B. BISTLINE,

Defendant.

VERDICT.

We the jury in the above entitled cause find for the plaintiff and assess the damages in the sum of \$600.00, without interest.

WILLIAM DEWEY,

Foreman.

Endorsed: Filed March 16, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.



*In the District Court of the United States in and for  
the District of Idaho, Eastern Division.*

No. 158.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH B. BISTLINE,

Defendant.

### JUDGMENT.

On the 16th day of March, 1914, this cause coming on regularly for trial, and the said parties appearing by their respective attorneys, a jury of twelve persons was regularly impaneled and sworn to try said action, whereupon witnesses on behalf of plaintiff and of defendant were sworn and examined and documentary evidence introduced. After hearing the evidence, the argument of counsel and the instructions of the court the jury retired to consider their verdict and subsequently returned in court, and being called answered to their names and said they found a verdict for the plaintiff against the defendant in the sum of six hundred (\$600.00) dollars.

WHEREFORE, by virtue of the law and by reason of the premises aforesaid, it is ordered and adjudged that said plaintiff have and recover from said defendant the sum of six hundred (\$600.00) dollars, with interest thereon at the rate of seven per cent (7%) per annum from the date hereof until paid, together with said plaintiff's costs and disburse-

ments in this cause laid out and expended, which costs are hereby taxed in the sum of \$17.80.

Judgment rendered March 24, 1915.

FRANK S. DIETRICH,

Judge of the above entitled Court.

Endorsed: Filed this 24th day of March, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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*In the District Court of the United States Within  
and for the District of Idaho, Eastern Division.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH B. BISTLINE,

Defendant.

### BILL OF EXCEPTIONS.

BE IT REMEMBERED that this cause was commenced on the 17th day of September, 1913, by complaint filed herein, to which reference is hereby made for particulars;

That thereafter defendant filed his demurrer to said complaint on the 3rd day of October, 1913, to which reference is hereby made for particulars;

That thereafter on the 31st day of January, 1914, the Court overruled and denied the said demurrer, to which ruling of the Court the defendant then and there excepted and now excepts, and assigns the same as error;

That thereafter on the 21st day of February, 1914, defendant filed his answer to the complaint,

and thereafter on the 9th day of March, 1914, by leave of court filed his amendment to said answer, to which said answer and amendment thereto reference is hereby made for particulars;

Thereafter on the 10th day of March, 1914, plaintiff filed its motion to strike the affirmative matter pleaded in said amendment to answer in bar of the plaintiff's cause of action, which motion was denied, and the said cause came to issue upon the said complaint, and the said answer and amendment thereto as aforesaid;

Upon the issue thus joined the said cause came regularly on for trial before said court and a jury duly empaneled, on the 16th day of February, 1915, which resulted in a verdict and judgment in favor of the plaintiff and against the defendant in the sum of six hundred dollars;

That thereafter on the 17th day of March, 1915, defendant filed and presented his petition to vacate and set aside the said verdict and judgment, and to grant defendant a new trial of said cause for the reasons and upon the grounds herein specified and assigned as error, but the court denied and refused the said petition, to which ruling the defendant then and there excepted and now excepts and assigns the same as error;

At the commencement of said trial and before any testimony was given, the defendant objected to the first testimony offered and to any testimony or evidence offered or submitted in the trial of said cause

for the reason that the complaint therein failed to state facts sufficient to constitute a cause of action or any part of a cause of action, or to entitle the plaintiff to any relief whatever, which objection was by the court overruled and denied, to which ruling of the court the defendant then and there excepted and now excepts;

Thereafter the plaintiff immediately offered testimony in proof of the allegations of the complaint, which was received by the court, subject to the objection of the defendant last aforesaid, and among other testimony offered by the plaintiff and received by the court was three certain deeds of conveyance made, executed and delivered the defendant Joseph B. Bistline and his wife Grace Bistline, to the persons and of the dates and acreage following, to-wit:

To Joseph H. Tolman, Jr., November 4th, 1910, eighty acres;

To Henry Caribo and Samuel Bloom, September 20th, 1910, forty acres;

To Henry S. Woodland, November 1st, 1910, forty acres;

That all of said deeds of conveyance were duly executed and delivered for a valuable consideration, and the grantees therein named went into immediate possession of said respective tracts thereunder, and still continue to hold the legal title to said lands; and the said deeds and each of them were on or about their respective dates duly recorded in the office of the County Recorder of Bannock County, State of

Idaho, in accordance with the laws of the State of Idaho; and the said conveyances covers and conveys all of the lands described in the plaintiffs complaint herein and in the patent therein described;

Thereupon the plaintiff rested its case, and the defendant offered in evidence, a bill in equity filed in said court on the 10th day of April, 1911, wherein The United States of America is complainant and Joseph B. Bistline is defendant, he being the same person who is defendant in the case at bar, for the cancellation of the same patent which is described in the complaint in the case at bar; the defendant also offered in evidence with said bill in equity, the answer of the defendant thereto, and the replication of the complainant to said answer, and the decree of said court upon the issues thus joined; which said "Bill of Complaint to Cancel Patent," "Answer to Bill of Complaint," "Replication," and "Decree," are marked defendants exhibits "A," "B," "C" and "D" respectively, and are in words and figures following, to-wit:

DEFENDANT'S "EXHIBIT A."

*In the Circuit Court of the United States Ninth Judicial Circuit for the District of Idaho  
Eastern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

JOSEPH B. BISTLINE,

Defendant.

## IN EQUITY.

*Bill of Complaint to Cancel Patent.*

*To the Honorable Judges of the Circuit Court of the United States, for the District of Idaho:*

Geo. W. Wickersham, Attorney General of the United States of America, for and on behalf of the United States of America, complainant, brings this bill of complaint against Joseph B. Bistline, defendant, and thereupon your orator complains and says:

## I.

That at all the times herein mentioned the defendant Joseph B. Bistline was and now is, a citizen of the United States and a resident of the County of Bannock, State and District of Idaho.

## II.

That prior to the acts hereinafter complained of, the complainant was the owner in fee simple and in the possession of the following public lands of the United States, to-wit: The north half of the northwest quarter and the southeast quarter of the northwest quarter and the southwest quarter of the northeast quarter of section eight in township six, south of range thirty-four, east of the Boise Meridian containing one hundred and sixty acres, more or less.

## III.

That on the 16th day of September, 1904, one Joseph B. Bistline, the defendant herein, desired to secure for himself the title, use and possession of the land hereinbefore described and for that purpose filed an application in the United States Land Office



at Blackfoot, Idaho, under Section 2289 of the Revised Statutes of the United States to enter as a homestead the real estate mentioned and described in paragraph "II" hereof; that on the said 16th day of September, 1904, the said applicant received Receiver's Receipt No. 9880 for sixteen dollars, being the amount of fee and compensation of Register and Receiver for said entry under Section 2290 Revised Statutes of the United States, from the then Receiver of the said United States Land Office.

#### IV.

That further for the purpose of securing the title, use and possession of the land aforesaid, the said Joseph B. Bistline, on the 15th day of September, 1904, subscribed and swore to his homestead affidavit, as required under Section 2290 of the Revised Statutes of the United States, before one Fred G. Caldwell, the then Deputy Clerk of the United States District Court for the District of Idaho, and thereafter filed the said affidavit in the United States Land Office at Blackfoot, Idaho, in which affidavit the affiant stated and swore, among other things, that his application, for the land heretofore described, was honestly and in good faith made for the purpose of actual settlement and cultivation and that he would faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to the land applied for and that he applied for same in good faith to obtain a home for himself and his family.

## V.

Further, to enable him to secure the title, use and possession of the said land, the said Joseph B. Bistline, on the 8th day of December, 1905, claimed the right to commute, under the provisions of Section 2301 of the Revised Statutes of the United States, of his said entry before one Fred G. Caldwell, a then duly acting and qualified Deputy Clerk of the United States District Court for the District of Idaho, at Pocatello, Idaho, and in pursuance of such claim, did on the 8th day of December, 1905, appear before such Deputy Clerk, as aforesaid, and swore and subscribed to an affidavit, and at the same time and place and before the same officer, appeared Theodore Swanson and William F. Kasiska, as witnesses for said Joseph B. Bistline, on final proof, and they the said witnesses, subscribed and swore to their respective affidavits in that behalf as required by law, in each of which affidavits the affiant therein stated and swore, among other things, that he, Joseph B. Bistline had settled upon the homestead on about the middle of March, 1905, and had established actual residence thereon at the same time; that the claimant and family resided continuously on the homestead since first establishing residence thereon and that he had not been absent from the land since making settlement; that the entryman had acted in good faith, but complainant alleges that the said affidavit of the said Joseph B. Bistline, and the said affidavit of the said Theodore Swanson, and the said affidavit of the said William F. Kasiska, referred



to in this paragraph of this bill, were all and each of them false, fraudulent and untrue in this; that in truth and in fact it was not true that the claimant and family resided continuously on the homestead since first establishing residence thereon about the middle of March, 1905, to the time of the said final proof, and that the entryman had not been absent from the land since making settlement, that in truth and in fact, at the time of the subscribing and swearing to said affidavits and the filing thereof, in the United States Land Office as hereafter set forth, the said entryman, and his family, had lived continuously off and away from said homestead since first making settlement, and with his family was continuously absent from his said homestead at all the times from the date of the said time, claimed as the time of settlement, to the time of final proof on commutation; that in truth and in fact that all the time that the said Joseph B. Bistline claimed residence upon said homestead and that he had not been absent from said homestead, he was in fact making his home with his family in the city of Pocatello, Idaho, off and away from said homestead and continuously resides with his family in said city of Pocatello, Idaho, at all the times which he stated in his affidavit, aforesaid, that he had resided upon said homestead, and had not been absent therefrom; all of which was well and truly known to each of them, the said Joseph B. Bistline, and the said Theodore Swanson and the said William F. Kasiska, when they made their several and respective affidavits as alleged in this paragraph

of this bill; and the complainant further alleges, that the affidavits referred to in this paragraph of this bill, were, after being so subscribed and sworn to before the said Deputy Clerk of the United States District Court aforesaid, by the said Joseph B. Bistline, caused to be filed in the United States Land Office at Blackfoot, Idaho, and were made, sworn to, subscribed and filed in the said Land Office with the intention and purpose on the part of the said Joseph B. Bistline that the same should be read and relied upon by the said officers of the complainant and for the purpose of enabling the said Joseph B. Bistline to secure to himself the title, use and possession of the said tract of land and ultimately obtain the patent hereinafter mentioned.

## VI.

That the officers of the complainant charged with the disposition of the public lands or the complainant relied upon and were deceived and misled by the said statements so made by the said Joseph B. Bistline, and the said Theodore Swanson and the said William F. Kasiska in their several and respective affidavits and supposed and believed the said statements to be true and because they were so deceived and misled and because they so relied upon the said statements and believed them to be true the said officers issued and delivered to the said Joseph B. Bistline the complainant's patent dated June 30th, 1906, conveying to the said Joseph B. Bistline the legal title of the said land.

All of which said actings, doings and pretences of the said Joseph B. Bistline, Theodore Swanson and William F. Kasiska are contrary to equity and good conscience and tend to the manifest injury and oppression of the complainant.

*Wherefore*, foreasmuch, as the complaint is remediless according to the strict rules of the common law and can have relief only in a court of equity where matters of this nature are property cognizable and relievable:

*To the end*, therefore, that the said defendant may full true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, but not on oath, his answer on oath being hereby expressly waived, as fully and particularly as if the same were hereinafter repeated and he distinctly interrogated; that the said defendant Joseph B. Bistline, may be adjudged and decreed to have defrauded the complainant of the land hereinbefore set out and that by reason of such fraud the patent so issued by the complainant to the said Joseph B. Bistline, may be revoked, cancelled and held for naught; that all and singular of said lands mentioned and involved herein may be decreed to be the property of the complainant and that the title to the same may be restored to and the right of possession given to the complainant; and that the complainant may have such other and further relief in the premises as may seem meet and proper to this Honorable Court and as shall be agreeable to equity and good conscience.

*May it please your honors* to grant unto the complainant a writ of subpoena of the United States of America, issued out of and under the seal of this Honorable Court, directed to the said Joseph B. Bistline, requiring him at a time certain and under a certain penalty, therein to be named personally to be and appear before this Honorable Court, and then and there to answer all and singular the matters and things here stated and to stand to and abide by the rules and decrees of this Honorable Court as to the Court may seem equitable and just.

(Signed) GEO W. WICKERSHAM,  
Attorney General for the United States of America.

C. H. LINGENFELTER,  
United States Attorney for the District of Idaho.

S. L. TIPTON,  
Assistant U. S. Attorney for the District of Idaho.

Filed April 10th, 1911. (Signed) A. L. Richardson, Clerk.

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DEFENDANT'S "EXHIBIT B."

*In the Circuit Court of the United States Ninth Ju-  
dicial Circuit for the District of Idaho,  
Eastern Division.*

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

JOSEPH B. BISTLINE,

Defendant.

IN EQUITY.

*Answer to Bill of Complaint.*

This defendant, now and at all times saving and reserving unto himself all benefit and advantage of the exceptions to the many errors, uncertainties, imperfections and insufficiencies in the complainant's bill of complaint contained, for answer thereto, or so much and such parts thereof as this defendant is advised is material or necessary for him to make answer to, answering says:

1st. This defendant admits that at all the times mentioned in the complainant's bill of complaint, he was and now is a citizen of the United States and a resident of Bannock County, State of Idaho.

2nd. This defendant admits that prior to the acts complained of in the complainant's bill of complaint, the said complainant, The United States of America, was the owner in fee simple of the north half of the northwest quarter and the southeast quarter of the northwest quarter and the southwest quarter of the northeast quarter of section 8, in township 6, south of range 34, east of Boise Meridian, in Bannock County, State of Idaho.

3rd. This defendant denies that on or about the 16th day of September, 1904, or at any other time, Joseph B. Bistline, the defendant herein, desired to secure for himself the title, use and possession of the following described lands, to-wit: The east half of the northwest quarter and the southeast quarter of the northwest quarter and the southwest quarter of



the northeast quarter of said section 8 in said township and range and for that purpose, defendant filed an application in the United States Land Office at Blackfoot, Idaho, under Section 2889 of the Revised Statutes of the United States, to enter as a homestead, the real estate last described, and that on said date the said Joseph B. Bistline received the receipt of the Receiver of said land office, No. 9880 and paid therefor the sum of sixteen (\$16.00) dollars, being the amount of fee and compensation of the Register and Receiver of said land office for the entry of said Joseph B. Bistline of said lands, under Section 2290 of the Revised Statutes of the United States; and this defendant further alleges that at the same time and place he paid to the Receiver of said land office the further sum of one hundred (\$100.00) dollars, the same being a portion of the purchase price for said lands required by the United States to be paid by this defendant at the time of his said entry.

4th. This defendant further admits that for the purpose of securing the title, use and possession of the last above described lands, the said defendant, Joseph B. Bistline, on the 15th day of September, 1904, subscribed and swore to his homestead affidavit as required by the laws of the United States, before one Fred G. Caldwell, the then Deputy Clerk of the United States District Court for the District of Idaho, and that thereafter the said Joseph B. Bistline caused to be filed the said affidavit in the United States Land Office at Blackfoot, Idaho; and this defendant admits that in said affidavit he stated and



swore among other things that his application for the lands above described, was honestly and in good faith made for the purpose of actual settlement and cultivation and that he, the said Joseph B. Bistline, would faithfully and honestly endeavor to comply with all the requirements of the law as to the settlement, residence and cultivation necessary to acquire title to the lands so applied for, and that he applied for the same in good faith, to obtain a home for himself and his family, and further avers that all of the said statements so made in the said affidavit were and are true.

5th. This defendant further admits that to enable him to secure the title, use and possession of said lands, that he on or about the 8th day of December, 1905, claimed the right to commute under the provisions of Section 2301 of the Revised Statutes of the United States, of his said entry before the said Fred G. Caldwell, Clerk as aforesaid, at Pocatello, Idaho, and in pursuance of said claim did, on or about the 8th day of December, 1905, appear before the said Deputy Clerk aforesaid, and swore and subscribed to an affidavit, and at the same time and place and before the same officer appeared Theodore Swanson and William F. Kasiska, as witnesses for this defendant on his final proof, and they, the said witnesses, subscribed and swore to their respective affidavits in that behalf as required by law, in each of which affidavits the affiants therein stated and swore among other things that he, Joseph B. Bistline, had settled upon said homestead on or about the middle

of March, 1905, and had established actual residence thereon at the same time; that the claimant and family resided continuously on the homestead since first establishing residence thereon and that said claimant had not been absent from said land since making settlement; that the entryman had acted in good faith; but defendant denies that said affidavits, or either of them, as made by the said Joseph B. Bistline, this defendant, or by the said Theodore Swanson or by the said William F. Kasiska, were, or are false, fraudulent or untrue in the respects alleged in said bill of complaint, or in any respect whatever; and this defendant denies that the time of the making of said affidavits, or either of them, that in truth or in fact it was not true that the claimant or his family resided continuously on the homestead aforesaid since he first established his residence thereon about the middle of March, 1905, to the time of his said final proof, and that he had not been absent from the land since making settlement; and denies that in truth and in fact at the time of subscribing and swearing to said affidavits, or at the time of the filing thereof in the United States Land Office, the said entryman and his family had lived continuously off and away from said homestead since first making settlement, and with his family was continuously absent from his homestead at all the times, or at any time from the said time claimed as the time of settlement, to the time of final proof on commutation; and denies that at the time of making of said affidavits, or at any

other time, that it was true or was a fact that at all or any of the times said defendant claimed residence upon said homestead, he had been or was absent from said homestead or had been or was making his home with his family in the city of Pocatello, Idaho, off or away from said homestead; and denies that at the time of making the said affidavits, or of the filing of the same in the land office aforesaid, it was true or was a fact that he had resided off or away from said homestead, or had continuously resided with his family in said city of Pocatello, Idaho, at all the times which he stated in his affidavit aforesaid that he had resided upon said homestead and had not been absent therefrom; and this defendant further denies that he, or the said Theodore Swanson, or the said William F. Kasiska, or either of them, when they made their several and respective affidavits as aforesaid, well or truly or otherwise knew that the said affidavits, or either of them was false or untrue, as alleged in said bill, or in any other respects whatever; but this defendant alleges the fact to be that at the time the said affidavits were made, and at the time that the same were filed in the land office aforesaid, and during the time since the entry of the said Joseph B. Bistline upon the lands aforesaid, and down to the time of the making and filing of said affidavits, that he with his family resided continuously on the lands aforesaid and that he had not been absent from the land since making settlement thereon; that he had a dwelling house upon said land during all of said time and had made his home with his family upon said lands to the exclusion of a home elsewhere,

and had in all respects complied with the requirements of the law requisite to obtain title to said lands as a homestead; and this defendant admits that the affidavits above referred to were, after being subscribed and sworn to before the aforesaid Deputy Clerk of the United States District Court aforesaid, by the said Joseph B. Bistline, caused to be filed in the United States Land Office at Blackfoot, Idaho, and that they were made, sworn to, subscribed and filed in the said land office with the intention and purpose on the part of the said Joseph B. Bistline to secure to himself the title, use and possession of the said tract of land and ultimately to obtain the patent mentioned in said bill of complaint.

6th. This defendant further says that he has every reason to believe and therefore alleges that the officers of the complainant, witnesses aforesaid, and that said officers supposed and believed the said statements to be true, by this defendant denies that the said officers or either of them were deceived or misled by said statements, or any of them, and denies because the said officers were deceived or misled that they, or either of them, the said officers, issued or delivered to the said Joseph B. Bistline, complainant's patent dated June 30, 1906, conveying to the said Joseph B. Bistline the legal title to said lands last above described; but on the contrary this defendant alleges that because of the statements made in said affidavits all of which were true at the time the same were made, and which said statements complied with the laws of the United States relative to making final proof on homestead claims, the said officers, in



compliance with the law, and with their duties in that respect, did legally and justly issue to the said Joseph B. Bistline the patent aforesaid, to which he, at the time of the issuance of the same was, and still is, entitled.

7th. This defendant denies that any acts or doings or pretenses of this defendant in the matter of his filing upon said lands, or his settlement of the same, or his final proof on the same, or that any acts of the said Theodore Swanson, or William F. Kasiska, in making affidavits on behalf of this defendant, is or ever was contrary to equity or good conscience, or that any of said acts tend, or ever tended to the manifest or other injury or oppression of the complainant.

8th. And this defendant further answering says: That after he had obtained patent for said lands last above described, in the manner provided by law, and was justly and legally seized and possessed of the same, that on or about the 4th day of November, 1910, this defendant and his wife, Grace Bistline, for a valuable and adequate consideration, and in good faith, sold, transferred and conveyed by a sufficient conveyance in writing, duly acknowledged and certified, all their right, title and interest in and to the southwest quarter of the northwest quarter and the southeast quarter of the northwest quarter of said Section 8, in said township and range, to Joseph H. Tolman, Jr., of Pocatello, Bannock County, State of Idaho, which said deed was duly delivered by this defendant to the said Joseph H. Tolman, Jr. and

thereafter duly recorded in the office of the County Recorder of Bannock County, State of Idaho; and that on or about the 20th day of September, 1910, this defendant and his said wife, Grace Bistline, for a valuable and adequate consideration and in good faith, sold, transferred and conveyed by a sufficient conveyance in writing, duly acknowledged and certified, all of their right, title and interest in and to the northwest quarter of the northwest quarter of said section 8, in said township and range to Henry Karibo and Samuel Bloom of Pocatello, Bannock County, Idaho, which said deed was duly delivered to the said Henry Karibo and Samuel Bloom, and thereafter recorded in the office of the County Recorder of said Bannock County, Idaho; and that on or about the first day of November, 1910, this defendant and his said wife, Grace Bistline, for a valuable and adequate consideration, and in good faith, sold, transferred and conveyed by a sufficient conveyance in writing, duly acknowledged and certified, all of their right, title and interest in and to the southwest quarter of the northeast quarter of said section 8, in said township and range, to Henry S. Woodland of Pocatello, Idaho, which said deed was duly delivered to the said Henry S. Woodland and thereafter duly recorded in the office of the County Recorder of said Bannock County; and each of the grantees to whom this defendant conveyed the said lands, as aforesaid, after the delivery of their respective deeds, went into the actual possession, use and occupation of the said lands and ever since the delivery of the said deeds,



as aforesaid, have been and now are in the actual, exclusive and notorious possession thereof, claiming title thereto; and this defendant therefore alleges that he disclaims any interest whatever in or to any of said lands or any part thereof.

All of which matters and things the defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct, and therefore prays hence to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) STANDROD & TERRELL,  
Solicitors and Counsel for Defendant.

Residence, Pocatello, Idaho.

Received a copy of the foregoing answer this May 1st, 1911.

(Signed) C. H. LINGENFELTER,  
U. S. Attorney.

Filed May 2nd, 1911. (Signed) A. L. Richardson, Clerk.

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DEFENDANT'S EXHIBIT "C."

*In the Circuit Court of the United States Ninth Judicial Circuit for the District of Idaho,  
Southern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

JOSEPH B. BISTLINE,

Defendant.

## IN EQUITY—NO. 133.

*Replication.*

This repliant, saving and reserving to itself now and at all times hereafter all and all matter of benefits and advantages of exception which may be had and taken to the manifold insufficiencies of the said answer of the defendant Joseph B Bistline, for replication thereto says that it will aver, maintain and prove its bill of complaint to be true, certain and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue and insufficient to be replied unto by repliant without this; that any other matter or thing whatsoever in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true, all which matters and things the repliant is and will be ready to aver, maintain and prove as this honorable court shall direct and humbly prays as in and by its said bill it hath already prayed

(Signed) C. H. LINGENFELTER,  
United States Attorney for the District of Idaho  
and Solicitor Complainant.

Filed September 17th, 1913. (Signed) A. L.  
Richardson, Clerk

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DEFENDANT'S EXHIBIT "D."

*In the District Court of the United States Within  
and for the District of Idaho, Eastern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

JOSEPH B. BISTLINE,

Defendant.

IN EQUITY—NO. 133.

*Decree.*

This cause came on regularly for hearing before the Honorable F. S. Dietrich, Judge of the above entitled court, the plaintiff appearing by C. H. Lingenfelter, United States Attorney and Solicitor, for complainant, and upon motion of the Solicitor for the complainant, said suit is dismissed.

*Wherefore*, by reason of the premises, it is ordered, adjudged and decreed that said suit be dismissed and that the plaintiff take nothing by said action.

Dated this 17th day of September, 1913.

(Signed) FRANK S. DIETRICH,  
District Judge.

Filed September 17, 1913. (Signed) A. L. Richardson, Clerk.

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Said exhibits "A," "B," "C" and "D," was offered by the defendant in support of his plea in bar that plaintiff was bound by his previous election of remedies and could not maintain this action, and in sup-

port of defendant's further plea in bar that the facts pleaded as a cause of action in the case at bar had been adjudicated in a previous action; for that purpose the said evidence was admitted and received by the court; the defendant offered no further evidence, but relied upon said special pleas and rested;

That the said deeds and the record thereof, and the said exhibits was all of the evidence offered or received in support of or bearing upon the said special pleas;

Whereupon the defendant requested the court to pass upon and decide as to the sufficiency of the proof in support of his special plea of the previous election of remedies by the plaintiff, as a matter of law, and to instruct the jury to find for the defendant upon said plea, but the court refused to pass upon the sufficiency of the evidence in support of said plea, and refused to give the jury a peremptory instruction to find for the defendant upon said plea, but held that the court would submit the evidence under said plea to the jury under proper instruction; To which ruling of the court the defendant then and there excepted and now excepts;

Whereupon the defendant requested the court to pass upon and decide as to the sufficiency of the proof in support of the special plea of *res adjudicata*, as a matter of law, and to instruct the jury to find in favor of the defendant upon said plea, but the court then and there held and decided that the proof and evidence offered was not sufficient in law to support

said plea, and refused to give the jury a peremptory instruction to find for the defendant upon said plea; to which ruling of the court the defendant then and there excepted and now excepts;

Whereupon the court instructed the jury upon the law relating to the election of remedies as applicable to the facts hereinbefore set forth, which instruction is in words and figures following, to-wit:

If, however, you should find in favor of the Government upon this issue, that is, if you should find that the defendant falsely represented that he had resided upon the land, when as a matter of fact he had not, then it will be necessary for you to consider another defense, called the affirmative defense, set up for the defendant, and, briefly, I may say to you a little more fully what I have already referred to, and that is that on April 10, 1911, the Government commenced an action in this court setting forth substantially the same facts as are now set forth in the complaint in this case, except that in the first case the Government sought a different sort of relief, that is, it asked that the patent be set aside; it did not ask for damages. It was what is called an equity suit. Later on, on May 2, 1911, the record shows that an answer was filed by the defendant, in which he denied the charges of fraud, and further set forth that prior to the commencement of that suit he had transferred this land to divers persons, and the records of the county offered in evidence show that some at least, if not all, of the conveyances were of record, were of public record. On September 17, 1913, as



further shown by this record, upon motion of the then United States District Attorney, the suit was dismissed; decree was entered dismissing it, and providing that the plaintiff take nothing by reason of the suit. Now, as I have already explained to you, the Government had the right either to pursue that remedy or to pursue this. The contention of the defendant is that, having pursued that remedy, it is now barred from pursuing this, that having elected one of two remedies, it is bound by the result of that suit. There is a general principle of law that where one has two remedies, or two inconsistent remedies, if the person, being advised of his rights, and being aware of the facts, adopts one of those remedies, he cannot later pursue the other; he is limited to the one. So that I advise you in this case, and in the light of that general principle, that if you find that at the time the Government commenced that suit in equity, which was commenced on April 10, 1911, and at the time that it prosecuted it, it was aware of its rights, that the Government officers were aware of the rights of the Government, its legal rights, and was also aware of the facts as now disclosed, including the fact of the transfer of these lands by the defendant to third persons, then you may properly conclude that it is bound by the election of the remedy which it made in that suit, and it could not recover in this one.

The foregoing instruction was the only instruction upon the question of the election of remedies, and was all of the instructions of the court upon that question;



to which instruction the defendant then and there objected and excepted and now excepts;

The defendant objected to the said instruction for the reason that it failed to charge the jury in terms or in effect; that if the plaintiff on the 10th day of April, 1911, when it commenced the action in equity to cancel the patent described in the complaint in the case at bar, had full knowledge *or the means of knowledge* of all of the facts and of its rights in the matter then to be litigated, including the knowledge *or the means of knowledge* of the previous conveyance of all of said lands described in said patent, by the defendant, then the plaintiff would be bound by its election, and could not recover in this action;

And the defendant then and there requested the court to instruct the jury that if the plaintiff, on the 10th day of April, 1911, when the action in equity to cancel the patent in question was commenced, had full knowledge, *or the means of knowledge* of all of the facts and of its rights in the matter then to be litigated, including the knowledge *or the means of knowledge* of the previous conveyance of all of said lands described in said patent, by the defendant, and then elected to commence the said action in equity to cancel the said patent, it would be bound by such election and could not recover in this action for damages growing out of the same state of facts; which requested instruction the court refused, to which ruling of the court the defendant then and there excepted and now excepts.

Thereupon the said cause was submitted to the

jury and a verdict in favor of the plaintiff and against the defendant for the sum of Six Hundred Dollars, was returned, and a judgment thereon entered, to which verdict and judgment the defendant then and there excepted and now excepts.

SPECIFICATIONS OF PARTICULARS WHERE-  
IN THE EVIDENCE IS INSUFFICIENT TO  
SUPPORT THE VERDICT AND JUDGMENT.

The evidence is wholly insufficient to support the verdict and judgment in that upon the said question of the election of remedies the evidence was documentary, and it showed conclusively and without contradiction that the lands described in the patent which was sought to be cancelled by the action in equity filed the 10th day of April, 1911, had been conveyed by the defendant and his wife nearly six months before the said action in equity was commenced, and that all of said conveyances were of record in the office of the County Recorder of Bannock County, where said lands are situated; and the complaint alleges that all of said lands were conveyed for a valuable consideration and that the grantees named in said deeds went into immediate possession of said lands and still continue to hold the legal title thereto, which allegation is admitted by the answer; and therefore, the plaintiff had the means of knowledge of all of the facts including the conveyance of said lands by the defendant, at the time when the action in equity to cancel said patent was commenced; all of which facts or of record and undisputed, and was all of the evidence upon said issue.

PARTICULAR ERRORS OF LAW RELIED  
UPON.

1. The court erred in over-ruling the defendant's demurrer to the plaintiff's complaint;

2. The court erred in permitting the plaintiff to make any proof under said complaint for the reason that it failed to state facts sufficient to constitute a cause of action, or to entitle the plaintiff to any relief whatever;

3. The court erred in submitting to the jury the defendant's special plea in bar, growing out of the plaintiff's election of remedies;

4. The court erred in refusing to give to the jury a peremptory instruction to find for the defendant upon the said special plea in bar growing out of plaintiff's election of remedies;

5. The court erred in holding that defendant had failed to establish his second plea in bar of *res adjudicata*, and in failing and refusing to give the jury a peremptory instruction to find in favor of the defendant upon said plea of *res adjudicata*;

6. The court erred in its instruction to the jury upon the question of election of remedies;

7. The court erred in refusing to give the requested instruction to the jury upon said question of the election of remedies;

8. The court erred in entering judgment upon the verdict herein;

9. The court erred in refusing the petition of the defendant for a new trial, and to set aside the

verdict and judgment made and entered in this case.

I hereby certify that the within and foregoing is a true bill of exceptions in said cause, and the same is allowed as the defendant's bill of exceptions.

Dated this the 18th day of March, 1915.

FRANK S. DIETRICH,  
Judge of said Court.

Endorsed: Filed March 18, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

Refiled March 26, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

Upon the representation of counsel for the defendant that he desires to have the bill of exceptions settled and filed after the entry of judgment, it is ordered that the foregoing bill be, and the same is, hereby again allowed as the defendant's copy of exceptions, and the clerk is directed to re-file the same as of this date.

Dated this 26th day of March, 1915.

FRANK S. DIETRICH,  
Judge.

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*In the District Court of the United States, Within  
and for the District of Idaho, Eastern Division.*

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOSEPH B. BISTLINE,  
Defendant.

*Petition for Writ of Error.*

Now comes the defendant J. B. Bistline in the above entitled cause and says: That he feels himself aggrieved by the verdict of the jury herein and the judgment entered thereon, in favor of the plaintiff and against the said defendant, on the 24th day of March, 1915, in which said judgment and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the Assignment of Errors, which is filed with this petition.

*Wherefore*, defendant prays that a Writ of Error may be issued in his behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that the transcript of record, pleadings and papers in the cause, duly authenticated, may be sent to the said Circuit Court of Appeals; and that an Order be made fixing the amount of security which defendant shall furnish upon said Writ of Error, for costs and damages and to operate as a supersedeas bond.

THOS. F. TERRELL and

R. M. TERRELL,

Attorney for defendant; Residence, Pocatello, Idaho.

Service of the foregoing Petition admitted this the 13th day of April, 1915.

J. L. McCLEAR,

J. R. SMEAD,

Attorneys for Plaintiff.

Endorsed: Filed, 13th day of April, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.



*In the District Court of the United States, Within  
and for the District of Idaho, Eastern Division.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH B. BISTLINE,

Defendant.

*Assignment of Errors.*

J. B. Bistline, defendant in this action, in connection with and as a part of his petition for Writ of Error filed herein, makes the following assignment of errors, which he avers were committed by the trial court in the rendition of the judgment against this defendant appearing from the records herein, that is to say:

FIRST. The Court erred in overruling defendant's Demurrer to the plaintiff's Complaint, and in deciding that said Complaint stated facts sufficient to constitute a cause of action against the defendant.

SECOND. The Court erred in permitting the plaintiff to make any proof under said Complaint, for the reason that said Complaint failed to state facts sufficient to constitute a cause of action, or to entitle the plaintiff to any relief whatever.

THIRD. The Court erred in submitting to the jury the defendant's special plea in bar, growing out of plaintiff's election of remedies.

FOURTH. The Court erred in refusing to give to the jury a peremptory instruction to find for the



defendant upon its said special plea in bar, growing out of plaintiff's election of remedies.

FIFTH. The Court erred in holding and deciding that defendant had failed to establish his plea in bar of *res adjudicata* and in failing and refusing to give the jury a peremptory instruction to find in favor of the defendant upon said plea.

SIXTH. The Court erred in its instruction to the jury, upon the question of the election of remedies in failing to instruct the jury that *means of knowledge* of all the facts and its rights in the matters to be litigated would bind the plaintiff as fully as actual knowledge of such facts.

SEVENTH. The Court erred in refusing to give to the jury the defendant's requested instruction upon said question of the election of remedies to the effect that the *means of knowledge* of all the facts and rights to be litigated would bind the plaintiff, if, with such *means of knowledge*, the plaintiff should make an election of remedies then open to it.

EIGHTH. The evidence is insufficient to support the verdict and judgment in that upon said question of election of remedies the evidence is documentary, and without conflict, and showed that plaintiff had the *means of knowledge* of all the facts and its rights at the time it made its election of remedies.

NINTH. The Court erred in entering judgment upon said verdict in favor of the plaintiff and against the defendant, whereas judgment should have been rendered in favor of defendant and against plaintiff.

*Wherefore*, defendant prays that the said judgment may be reversed and that a judgment may be ordered in favor of the defendant.

JOSEPH B. BISTLINE,  
Defendant.

By THOS. F. TERRELL,  
Attorney for Defendant, Postoffice address, Pocatello, Idaho.

Service of the foregoing Assignment of Errors admitted, this the 13th day of April, 1915.

J. L. McCLEAR,  
J. R. SMEAD,  
Attorneys for Plaintiff.

Endorsed: Filed, 13th day of April, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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*In the District Court of the United States, Within  
and for the District of Idaho, Eastern Division.*

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOSEPH B. BISTLINE,  
Defendant.

*Order Allowing Writ of Error.*

On this the 13th day of April, 1915, came defendant by his attorney and filed herein and presented to the Court his petition praying for the allowance of a Writ of Error, and filed herein and presented an Assignment of Errors intended to be urged by

him, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the Court does allow the said Writ of Error, upon the defendant's giving bond according to law in the sum of One Thousand and no-100 (\$1000.00) Dollars, which shall operate as a supersedeas bond.

FRANK S. DIETRICH,  
Judge.

Service of the foregoing Order Allowing Writ of Error, admitted this the 13th day of April, 1915.

J. L. McCLEAR,  
J. R. SMEAD,  
Attorneys for the Plaintiff.

Endorsed: Filed, 13th day of April, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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*In the District Court of the United States, Within  
and for the District of Idaho, Eastern Division.*

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOSEPH B. BISTLINE,  
Defendant.

*Bond on Writ of Error.*

*Know All Men by these Presents:* That Joseph B. Bistline as principal and W. F. Kasiska and E. C. White as sureties are held and firmly bound unto the United States of America, in the full and just sum of One Thousand and no-100 (\$1000.00) Dollars, to be paid to the said United States of America, its successors or assigns, for which payment well and truly to be made we bind ourselves, our heirs executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated this the 8th day of April, 1915.

*Whereas*, lately at the March term of the District Court of the United States, within and for the District of Idaho, Eastern Division, in a suit pending in said Court, between the United States of America plaintiff and Joseph B. Bistline, defendant, judgment was rendered against said defendant, and said defendant has obtained a Writ of Error on said Court to reverse the judgment in said suit, and a citation directed to said plaintiff admonishing it to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, in the City of San Francisco, State of California, thirty days from and after the date of said citation.

Now, the condition of the above obligation is such that if the said Joseph B. Bistline shall prosecute said Writ of Error to effect, and answer all damages and costs, if he shall fail to make good his plea, then

the above obligation to be void, otherwise to remain in full force and virtue.

Witness our hands and seals the day and year last above written.

JOSEPH B. BISTLINE, (Seal.)

J. B. BISTLINE, (Seal.)

W. F. KASISKA, (Seal.)

E. C. WHITE. (Seal.)

State of Idaho,

County of Bannock—ss.

W. F. Kasiska and E. C. White each being severally duly sworn deposes and says: That he is a surety whose name is subscribed to the within and foregoing Undertaking; that he is a resident and freeholder within the County of Bannock, State of Idaho; and that he is worth the sum specified in the within and foregoing Undertaking as the penalty thereof, over and above all his just debts and liabilities and exclusive of property exempt by law from execution.

W. F. KASISKA,

E. C. WHITE.

Subscribed and sworn to before me this the 8th day of April, 1915.

THOS. F. TERRELL,

(Seal.)

Notary Public.

We are satisfied with and accept the foregoing bond, and the sureties thereon as a sufficient bond on the Writ of Error allowed herein.

J. L. McCLEAR,

J. R. SMEAD,

Attorneys for Plaintiff.

Approved this the 13th day of April, 1915.

DIETRICH,  
Judge.

Endorsed: Filed, 13th day of April, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

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*In the District Court of the United States, Within  
and for the District of Idaho, Eastern Division.*

THE UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
JOSEPH B. BISTLINE,  
Defendant.

*Writ of Error.*

United States of America—ss.

*The President of the United States, to the Judges of  
the District Court of the United States for the  
District of Idaho, Eastern Division, Greeting:*

The cause, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said District Court, before you, or one of you, between Joseph B. Bistline, plaintiff in error and the United States of America, defendant in error, a manifest error hath happened to the great damage of the said Joseph B. Bistline, plaintiff in error, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do com-



mand you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Ninth Judicial District, together with this Writ, so that you have the same at the City of San Francisco, in the State of California, within Thirty (30) days from the date hereof, in the said Circuit Court of Appeals, to be then and there held that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

*Witnesseth*, The Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this the 13th day of April, One Thousand Nine Hundred and Fifteen.

Issued at Boise, Idaho, with the seal of the United States District Court of the District of Idaho, and dated as aforesaid.

A. L. RICHARDSON,

Clerk of said United States District Court.

By Pearl E. Zanger, Deputy.

(Seal.)

Allowed by Frank S. Dietrich, Judge of said District Court.

Endorsed: Filed April 13, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

*In the District Court of the United States Within  
and for the District of Idaho, Eastern Division.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH B. BISTLINE,

Defendant.

*Citation.*

*The President of the United States to The United States of America the plaintiff, and to C. H. Lingenfelter, Ex-United States Attorney, for the District of Idaho, and J. S. McClear, United States Attorney for the District of Idaho, and successor to the said C. H. Lingenfelter, Attorneys of record for said plaintiff, greeting:*

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, to be held at the City of San Francisco, in the State of California, within Thirty (30) days from the date of this Writ, pursuant to a Writ of Error filed in the office of the Clerk of the District of Idaho, Eastern Division, wherein Joseph B. Bistline is plaintiff in error and you the said The United States of America is defendant in error, to show cause, if any there be, why the said judgment in the said Writ of Error, mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable William B. Gilbert, United

States Circuit Judge, this the 13th day of April, 1915.

FRANK S. DIETRICH,  
United States Circuit Judge.

Attest: A. L. Richardson, Clerk of said District Court. By Pearl E. Zanger, Deputy.

Service of the within Citation admitted, on this the 13th day of April, 1915.

J. L. McCLEAR,  
J. R. SMEAD,  
Attorneys for Defendant in error.

RETURN TO WRIT OF ERROR.

And thereupon it is ordered by the Court, that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto related, be transmitted to the said United States Circuit Court of Appeals, for the Ninth Judicial Circuit, and the same is transmitted accordingly.

Attest: A. L. RICHARDSON, Clerk.

(Seal.) By Pearl E. Zanger, Deputy.

Endorsed: Filed April 13, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOSEPH B. BISTLINE,  
Defendant.

*Stipulation for Record on Return of Writ of Error.*

It is hereby stipulated and agreed by and between the respective parties to the above entitled cause through their Attorneys of record, that the following

*In the District Court of the United States Within  
and for the District of Idaho, Eastern Division.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH B. BISTLINE,

Defendant.

*Citation.*

*The President of the United States to The United States of America the plaintiff, and to C. H. Lingenfelter, Ex-United States Attorney, for the District of Idaho, and J. S. McClear, United States Attorney for the District of Idaho, and successor to the said C. H. Lingenfelter, Attorneys of record for said plaintiff, greeting:*

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Ninth Judicial Circuit, to be held at the City of San Francisco, in the State of California within Thirty (30) days of

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where Joseph B. Bistline is plaintiff in error and you the said The United States of America is defendant in error, to show cause, if any there be, why the said judgment in the said Writ of Error, mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable William B. Gilbert, United

States Circuit Judge, this the 13th day of April, 1915.

FRANK S. DIETRICH,  
United States Circuit Judge.

Attest: A. L. Richardson, Clerk of said District Court. By Pearl E. Zanger, Deputy.

Service of the within Citation admitted, on this the 13th day of April, 1915.

J. L. McCLEAR,  
J. R. SMEAD,  
Attorneys for Defendant in error.

RETURN TO WRIT OF ERROR.

And thereupon it is ordered by the Court, that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto related, be transmitted to the said United States Circuit Court of Appeals, for the Ninth Judicial Circuit, and the same is transmitted accordingly.

Attest: A. L. RICHARDSON, Clerk.  
(Seal.) By Pearl E. Zanger, Deputy.

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*In the District Court of the United States Within  
and for the District of Idaho, Eastern Division.*

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOSEPH B. BISTLINE,  
Defendant.

*Stipulation for Record on Return of Writ of Error.*

It is hereby stipulated and agreed by and between the respective parties to the above entitled cause through their Attorneys of record, that the following



*Clerk's Certificate to Transcript of Record.*

I, A. L. Richardson, Clerk of the District Court, of the United States, in and for the District of Idaho, do hereby certify that the above and foregoing transcript of pages from One to ...<sup>7.4</sup>....., inclusive, contain true and correct copies of the Complaint Action at Law, Demurrer to Complaint, Order over ruling Demurrer to Complaint, Answer, Order allowing Defendant to file Amendment to Answer, Amendment to Answer, Motion to Strike, Order Denying Plaintiff's Motion to Strike, Verdict of the Jury, Judgment, Bill of Exceptions, Petition for Writ of Error, Assignment of Errors, Order Allowing Writ of Error, Bond on Writ of Error, Writ of Error, Citation on Writ of Error, Return to Writ of Error, Certificate of Clerk, in the above entitled cause, which constitute the transcript of the record and return to the annexed Writ of Error.

I further certify that the costs of the record herein amounts to the sum of \$<sup>90.70</sup>, and that the same has been paid by the plaintiff in error.

*Witness*, my hand and the seal of said District Court, affixed at Boise, Idaho, this the <sup>30<sup>th</sup></sup>... day of April, 1915.

A. L. RICHARDSON,  
Clerk.